

## REMARKS

Claim 30 is amended and claims 30-35 and 38-39 remain in the Application for consideration. In view of the following remarks, Applicant respectfully requests a Notice of Allowability be issued.

### § 112 Rejections

Claims 30-35, 38 and 39 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement. While Applicant respectfully disagrees with the Office's argument in this regard, Applicant has nonetheless amended claim 30 to overcome this rejection and expedite prosecution of this Application.

### § 103 Rejections

Claims 30-35 and 38-39 stand rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U.S. Patent Pub. No. 2003/0174882 to Turpin, et al. (hereinafter "Turpin") in view of U.S. Statutory Invention Reg. No. H1506 to Beretta and further in view of Easy RGB.

After reviewing the cited references, Applicant respectfully submits that the Office's *prima facie* case of obviousness fails for at least the reason that the Office has failed to establish that Easy RGB is available as prior art against the current Application. In order to rely on an internet resource as prior art, the MPEP provides that:

Prior art disclosures on the Internet or on an online database are considered to be publicly available as of the date the item was publicly posted. *If the publication does not include a publication date (or retrieval date), it*

1 *cannot be relied upon as prior art* under 35 U.S.C. 102(a) or (b), although  
2 it may be relied upon to provide evidence regarding the state of the art.  
3 MPEP § 2128.

4 Further, the MPEP at § 2141.01 provides that “[a] 35 U.S.C. 103 rejection  
5 is based on 35 U.S.C. 102(a), 102(b), 102(e), etc. depending on the type of prior  
6 art reference used and its publication or issue date.”

7 While the Easy RGB reference provided by the Office indicates a *copyright*  
8 date range of 2000-2006, this by no means specifies or implies a particular  
9 *publication* date for the material therein relied on by the Office. Accordingly, the  
10 only prior art date that can be discerned by Applicant is the stated document  
11 access date (i.e. retrieval date) of August 21, 2006, almost three years subsequent  
12 to the filing of this Application.

13 In conclusion, Applicant submits that, based on the documentation  
14 provided by the Office, the Easy RGB reference is not available as prior art  
15 against the present Application. For at least this reason, Applicant respectfully  
16 submits that the Office has failed to establish a *prima facie* case of obviousness  
17 with respect to the claims herein. Accordingly, claims 30-35 and 38-39 are  
18 allowable.


### 19 Conclusion

20 All of the claims are in condition for allowance. Accordingly, Applicant  
21 requests a Notice of Allowability be issued forthwith. If the Office's next  
22 anticipated action is to be anything other than issuance of a Notice of Allowability,  
23 Applicant respectfully requests a telephone call for the purpose of scheduling an  
24 interview.  
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Respectfully Submitted,

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By:   
Lance R. Sadler  
Reg. No. 38,605  
(509) 324-9256